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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,682	04/13/2001	Robert Eugene Vogt	29566/KC15,412	4329
22827	7590	07/12/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			REICHLE, KARIN M	
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			3761	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/834,682	Applicant(s) VOGT ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8-12 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4-22-05 has been entered.

Election/Restrictions

2. Claims 6-7 and 13-14 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 4.

Amendments

3. The amendment to the Summary of the Invention section is unclear. While it is requested that the Summary be cancelled and replaced, only one paragraph of the Summary as it existed prior to that amendment is shown struck thru, i.e. it is unclear whether only the one paragraph was to be cancelled or whether the entire section was to be cancelled but the amendment did not comply with 37 CFR 1.121. Therefore, such amendment is being treated as an amendment to only the one paragraph of the entire Section and the remainder of the section as

Art Unit: 3761

originally filed is treated as still present. If Applicant desires the remainder of the section to be canceled Applicant should do so in compliance with 37 CFR 1.121 in the next response, if any.

Specification

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

Drawings

5. The drawings were received on 4-22-05. These drawings are not approved by the Examiner. The drawings were not approved because the letter "F" added thereto is not described anywhere in the text.

6. The drawings are objected to because where is the free area as set forth in the description and claims shown/denoted? Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet

Art Unit: 3761

submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

7. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention Section is redundant, i.e. page 4, line 29-page 7, line 3 of the original Summary should be deleted. See discussion in paragraph 3 supra. 2) In the amendment to page 13, line 20, the second to last sentence is missing a word or words. 3) In the added paragraphs of the Summary of the Invention section, the amendment to page 13, line 20 and claims 22-24 Applicant now sets forth that the attachment sites move or ride with the lateral sections as the latter stretch. However such description appears, at the very least, to be inconsistent with the description of the invention as originally set forth. A clear consistent description of the structure supported by the original disclosure should be set forth. It is noted that the originally filed specification teaches that the lateral sections are at the very least resiliently extensible. The specification also teaches that the attachment sites are between the lateral sections and the side edges of the front portion. However, such side edges have not been disclosed as being at the very least resiliently extensible. The attachment sites are formed by the structure as set forth, e.g., in claims 4, 11 and 23 but such site structure has also not been disclosed as at the very least resiliently extensible. Additionally the intact sites have been disclosed as stabilizing the lateral sections relative to the front portion, i.e. the longitudinal axis thereof. Therefore, it appears, at

Art Unit: 3761

most, the original specification supports the lateral sections surrounding the attachment sites being resiliently stretchable relative to such sites. The attachment sites themselves, i.e. the structure of claims 4, 11 and 23, as best understood, would not, or, at the very most, only negligibly move with or ride on such material, i.e. to the extent they can still stabilize and up to the strength at which they will break rather than the front portion fracturing (It is noted that no specific dimensions of the strength have been denoted), because the sites are also attached to the front portion neither of which structures are resiliently extensible, i.e. the only stretchable part is the lateral section surrounding the sites. It appears only the lateral sections would stretch relative to the sites until they reach their maximum elongation. At this point, since the sites are described as not fracturing the front portion, the sites or attachments would break rather than the front portion or lateral section materials fracturing. This does not appear to be the same as what is disclosed and claimed by the application as now amended.

Appropriate correction is required.

Claim Language Interpretation

8. Where Applicants have not specifically defined any claim language, the language will be given its common, i.e. dictionary, definition. It is noted, see, e.g., claim 8, lines 7-9, that the outer portion is not set forth as only being defined between the fastener receptive area on the front portion and the outer edge of the lateral section or extends from the area to the edge (It is noted that the specification as originally filed does not specifically disclose where the inner portion stops and the outer portion begins. However, it is disclosed that the fastener is attached to the inner portion and to the receptive area and the outer portion extends from the inner portion

Art Unit: 3761

to the outer edge, so some part of the outer portion must be between the receptive area and the outer edge). The claims only require some portion of the outer portion be between the area and the edge. It is further noted that, e.g., see claim 8, lines 12-19 and similar language in claim 22, the claims only require sites which are 1) inward of and 2) adjacent to the side edges and 3) which are closest to the inner edge of the fastener to be 4) closer to the side edge than the inner edge (“adjacent” as defined by the dictionary is “Close to, lying near. Next to; adjoining”), i.e. sites which are not inward of and adjacent to the side edges are not required to be closer to the side edge. It is also noted that “adjacent” is also a relative term absent claiming of a specific distance. It is noted that the claims do not require the outer portion to be attached to the front portion only by “the at least one attachment site” having requirements 1)-4) supra. It is finally noted that a “fastener receptive area” and “a releasable fastener” as claimed in claims 8 and 22 and releasable fastening to the front portion as claimed in claim 22 do not require the capability of refastening after release. Now claim 8 also requires the strength of attachment being sufficiently weak such that the sites can be separated from the front portion to adjust the releasable fastener, i.e. the fastener has the capability of adjustment. “Adjust” as defined by the dictionary is “To change so as to match or fit; cause to correspond. To bring into proper relationship”. “Fracturing” is defined in the amendment to page 12, line 9, lines 1-4 thereof and therefore “without substantially fracturing” is defined as without fracturing taking into account any manufacturing tolerances. However no specific dimensions of strength of attachment are claimed. With regard to claims 22-24, see discussion supra in paragraph 7. Due to the lack of clarity as to what moves and what does not move, if the lateral sections move relative to the attachment sites to some extent, e.g. to allow the article to be pulled on and off like a pant, alone

Art Unit: 3761

or the sites move along with the sections as the sections stretch, such will be considered to meet the claim language. It is noted in the latter case that the specific amount of movement and stretchability has not been claimed, e.g. anything more than no movement and no stretchability would meet the limitation. With regard to claim 24, the claim will be considered to require lateral sections being free from direct attachment to the front portion at a free area between the releasable fastening at the inner portion and the said at least one attachment site. However it is also noted that the free area is not required to include the entire area between the fastener and the attachment site adjacent the side edges.

Claim Rejections - 35 USC § 112

9. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 24, how can the outer portion be attached to portions adjacent respective side edges as set forth in claim 22 yet the lateral sections not be attached at the free area as now set forth on lines 3 et seq of claim 24? It is noted that “attached” as commonly defined includes both direct and indirect attachment. Therefore, claim 24 is inconsistent with claim 22. This rejection could be overcome by claiming the lateral sections being free from direct attachment at a free area.

Claim Rejections - 35 USC § 102

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1, 3-5, 8-12 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Romare '484.

Claims 8, 3-5, 10-12: See Claim Language Interpretation section supra, and abstract, Figures, especially Figures 2-3, col. 1, line 57-col. 2, line 22, col. 2, lines 40-63, col. 3, line 21-col. 4, line 21, col. 4, lines 26-66 and col. 5, lines 6-53, i.e. Romare discloses a personal care article having a longitudinal axis and comprising a front portion, 6 or 106; a back portion, 7 or 107; a crotch portion, 8 or 108; fastener receptive area, 17 or the area beneath releasable fastening points adjacent 115 and 116 or both; lateral sections 113, 114, see col. 3, lines 40-42, 46-47 and 61-65; which have inner portions, adjacent 115 and 116; outer portions; at least portions of 113 and 114 adjacent 110 (Note the dashed lines in Figure 3 denoting the edge of the absorbent 103 and side edges of 106 and see element 17 in Figure 2 with regard to the dashed line denoting the absorbent 3 and the solid lines denoting the side edges of 6); outer edges, 113 and 114 adjacent side edges of back portion; releasable fasteners, i.e. 115, 116 alone or in combination with releasable fastening points adjacent 115 and 116; having an inner edge and releaseably fastened to the front portion or fastener receptive portion closer to the longitudinal axis than to the outer edge, see Figure 3; the outer portion of the lateral sections attached at at least one attachment site to the front portion inwardly of but adjacent the side edges, i.e. at least the points 110 closest to or next to the side edges of front portion 6; and one or more of such sites which are closest to the inner edge of the releasable fastener, i.e. at least the points 110

Art Unit: 3761

closest to or next to the side edges, closer to the side edge than to the inner edge, see Figure 3.

With regard to last 5 lines of claim 8, see, e.g., col. 2, lines 7-12, col. 4, lines 4-21, col. 5, lines 14-31, see again Figure 1 and Figure 2 and note col. 2, lines 28-31, i.e. Figure 2 shows the diaper of Figure 1 in the opened state, shows no fracturing of front portion, i.e. attachment sites can be separated from the front portion and the releasable fastener released and then caused to correspond again or be brought into proper position again to refasten, i.e. adjust, the releasable fastener without fracturing. Therefore, while the Romare patent is believed to explicitly set forth the strength of attachments, even if not, the structure of the fastenings of Romare is the same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2112.01.

Claims 1 and 9: see Figure 3 and col. 3, lines 58-65.

Claim 21: see Figures and, e.g., col. 3, line 58-col. 4, line 21, and col. 5, lines 14-25.

Claims 22-23: see discussion of claims 1, 3-5, 8-12 and 21 supra. Additionally with regard to lines 12-14 and 19 et seq, i.e. these lines set forth the functions, capabilities and properties of the lateral sections and attachment site structure. See also Claim Language Interpretation Section supra and cited portions of Romare supra, especially col. 2, lines 12-13, col. 3, lines 34-36, col. 5, lines 6-7. Therefore, at the very least, the structure of the sections and sites of Romare as configured is the same as that claimed. Thus there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure, if not already explicitly disclosed, are also inherent in the same structure of Romare, see MPEP 2112.01, especially in light of the lack of clarity discussed supra.

Claim 24: As best understood, see discussion of claims *supra* and Figure 3, the spaces adjacent the ends of the lines from 113 and 114 are free from direct attachment and such spaces are between the releasable fastening at the inner portion and the at least one attachment site, i.e. the areas between the two dashed lines at the ends of the lines from 110 in Figure 3.

Attention is also invited to the response to arguments section *infra*.

Response to Arguments

12. Applicant's remarks with regard to the matters of form have been noted but are either deemed moot in that they have not been re-raised or are deemed not persuasive for the reasons set forth *supra*. It is noted that the last full sentence on page 12 of the remarks is not consistent with the disclosure because the cited portions do not disclose the front portions being extensible but rather disclose the lateral sections being extensible. Applicant's remarks in the first two full paragraphs on page 13 have also been considered but are deemed not persuasive because such are narrower than the claim language and the teachings of Romare. For example, claim 8 requires the separation of the sites from the front portion without the fracturing thereof. Therefore the separating line 12 is irrelevant since the line is not directly attached by attachment sites to the front portion. It is also noted, see portions of the reference cited *supra*, that such line can also be just the abutting ends of the two separate pieces making up structure 9. In any case and furthermore Romare, including the portions cited by Applicant, does not show or teach fracturing and there is no other evidence presented that Romare "must fracture" the front portion as argued. In fact, Figure 2, referred to by Applicant, is in the opened position and clearly shows an intact front portion where the sites were in Figure 1. Applicant's remarks with respect to

Art Unit: 3761


claim 22 have also been considered but are deemed not persuasive not only for the reasons set forth with regard to claim 8 but also set forth in paragraphs 7 and 8 supra. It is noted again that what structure appears to be taught, see discussion in paragraph 7 supra, i.e. elasticized lateral portions, releasable adhesive or weld attachment sites, and a releasable fastener, is also taught by Romare and thereby, Romare, at the very least, inherently includes such capabilities, functions and properties.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761